THE HON'BLE SRI JUSTICE G.CHANDRAIAH

W.P.NOS.24744 OF 1997 AND 4399 OF 2002

COMMON ORDER

Heard the counsel for the petitioners and the Standing Counsel for the Central Government.

2. Since the issue involved in both the writ petitions is one and the same and the petitioners in both the writ petitions are the members of the Ex-Servicemen Co-operative Collective Farming Society, Tadepalligudem, West Godavari District (for short 'the Society') and the respondents are one and the same, they are being disposed of by this common order.

3. Both these writ petitions are filed for a writ of mandamus directing the respondents not to interfere with the possession of the members of the society in different extents of land situate in Air field land at Tadepalligudem, Kodakatla, Kondruprolu and Kunchenapalli in West Godavari District.

4. The case of the petitioners in both the writ petitions is that they are the members of the Society, which is registered under the Co-operative Societies Act, 1964 and which consists of members belonging to Schedule Castes, Schedule Tribes and Backward Classes and they are in possession of different extents in the air field land admeasuring Acs.650-00 at Tadepalligudem, Kodakatla, Kondruprolu and Kunchenapalli villages respectively, by virtue of the lease granted to the Society by the Government of India for cultivation and pursuant to the proposal of the Director General of Defense Lands and Cantonments, New Delhi to sell the lands in the year 1978, they made a representation on 10.9.1982 to the Defence Estate Officer, Visakhapatnam agreeing to the purchase the land and sought to grant 10 or 15 installments to pay the cost of the land which is about Rs.65,00,000/-. Their lease was extended up to 31.12.1983. When the Defence Estate Officer, Visakhapatnam intimated the Society to handover the physical possession to the Department and directed not to allow anybody to enter the land through letter dated 30.5.1985, the Society filed W.P.No.7195/1985 before this Court for a direction not to interfere with their possession and

when the said writ petition was dismissed, the Society carried the matter in appeal in W.A.No.1445/1986 and the said writ appeal was dismissed with an observation that if the respondents have any intention to sell or lease the properties, the preferential claim, if any, of the petitioners' – society should be considered in view of the fact that it is alleged to be a society of Ex-Servicemen belonging to schedule tribes and weaker sections of the Society. Therefore the case of the petitioners' – society is that they are in possession of the land in question and as the Central Government is willing to dispose of the land, the same shall be as per the directions of the Division Bench of this court in the W.A.No.1445/1986. As the respondents are threatening the members of the petitioners' – society to vacate the land in question, the present writ petition is filed.

5. The Defense Estate Officer, Defence Estates Office, Visakhapatnam – 2nd respondent in W.P.No.24744/1997 filed counter and while admitting the existence of the Society and the lease in favour of the members of the petitioners' – Society, stated *inter alia* that the lease has come to an end on 31.12.1983 and subsequently no lease was in existence and that the petitioners' – Society was also given an opportunity to purchase the land, but they did not come forward to purchase the same within three years from the date of the offer i.e., by 1986 and subsequently when the Defense Estate Officer had written a letter dated 30.5.1985 asking the Society to handover the land, the Society filed W.P.No.7195/1985 and after the dismissal of the writ petition on 30.10.1986, the matter was carried in appeal in W.A.No.1445/1986 and the said writ appeal was dismissed with an observation that if the respondent are willing to sell or lease out the property, the petitioners' claim shall be considered. It is stated that the Defence Estate Officer has taken over the possession of the land on 21.11.1986 and handed over to the District Collector, West Godavri District on 3.8.1987 on custodian basis. Therefore, it is sated that as the possession was not with the members of the petitioners' – society, the question of threatening the members to vacate the land does not arise and further the Central Government have no intention to sell the lands to any society. It is also stated that the petitioners' – society has become defunct and it has no locus standi to file the present writ petition. With these averments, the writ petition was sought to be dismissed.

6. No reply as been filed.

7. From the above averments there is no dispute that the lease in favour of the members of the petitioners' – society has come to an end in the year 1983. In the writ affidavit it is stated that pursuant to the decision of the Director General of Defence lands and Cantonments, New Delhi to sell the air field land to petitioners' – Society in the year 1978, the society made a representation on 10.9.1982 to the Defence Estates Officer, Viskahpatnam requesting to allot the land to the Society and to permit them to pay the cost of the land which is about Rs.65,00,000/- in 10 or 15 installments. In the writ petition it is not categorically stated whether the said request was considered or not and the averments in this regard are very vague and further as per the averments made in the counter, though the petitioners' – Society was offered to purchase the land, the society did not come forward to accept the offer up to 1986 i.e., for about three years. In the counter it is categorically stated that the possession of the land was taken over from the members of the Society on 21.11.1986 by the Defence Estates Officer and handed over to the District Collector, West Godavari District on 3.8.1987 on custodian basis. Though there is dispute with regard to possession and offer of the land by the Central Government to the petitioner's Society and their refusal to purchase the same, the petitioners' - Society did not choose to file any reply to the counter averments. It is also further categorically stated in the counter affidavit that the Central Government have no intention to sell the land to any society. As per the averments made in the counter affidavit, the petitioners' – Society has become defunct. In view of these circumstances, the relief sought for in the writ petitions directing the respondents not interfere with their possession, cannot be granted, since as per the counter averments, the possession of the land was taken over by the respondents on 21.11.1986.

8. It is further to be noticed that for the similar relief, as sought for in the present writ petitions, the writ petitioners had earlier filed writ petition in W.P.No.7195/1985 and when the same was dismissed on 30.10.1986 carried the matter in writ appeal in W.A.No.1445/1986 and the Division Bench of this court dismissed the writ appeal on 29.4.1987with an observation that if the respondents have any intention to sell or lese out the property, the

preferential claim, if any, of the petitioners society should be considered. Therefore, the claim of the petitioners' – Society has been rejected in the earlier round of litigation and it has become final. Further, the petitioners have not filed any material to show that the respondents are intending the sell or lease out the property in question and further the specific case of the respondents in the counter is that the Central Government have no intention to sell the land to any society and further as noted above, as per the counter averments, the possession was handed over to the State Government on 3.8.1987. In these circumstances, the present writ petitions filed for the similar relief, which was sought for in the earlier round of litigation in W.P.No.7195/1985 and W.A.No.1445/1986, are not maintainable and it amounts to abuse of process of law and on this count also, the writ petition is liable to be dismissed.

9. Some persons claiming to be members of the Society had earlier filed a writ petition in W.P.No.14403/2001 with similar set of facts and the learned single Judge by order dated 16.07.2001 dismissed the writ petition. The operative portion of the order is extracted as under for better appreciation:

> "In my considered opinion, the writ petition does not disclose any valid or substantial grounds requiring any interference of this court. There is no material or evidence to show that the respondents have granted any lease whatsoever in favour of the petitioners at any point of time. Admittedly, the lease was in favour of an Ex-Servicemen Co-operative Collective Farming Society. There is nothing on record to show that all these petitioners were members of the said society. At any rate, the said society itself has become defunct. In these circumstances, the question of exercise of any preferential right as such in terms of the observations made by a Division Bench of this court in W.A.No.1445 of 1986 does not arise. It is required to notice that no lease has been granted in favour of the petitioners individually. But the lease was initially granted by the Defence Estate Officer in favour of the Ex-Servicemen Cooperative Collective Farming Society. The said lease has come to an end by efflux of time as early as in the year 1983. The order passed by the Division Bench of this court negativing the claim of the society has become final.

> In the circumstances, no relief could be granted to the petitioners. The petitioners, obviously, are indulging in some speculative litigation.
> For the aforesaid reasons, I do not find any merit in this writ petition. The same shall accordingly stand dismissed."

10. For the foregoing reasons and also in view of the order of the learned single Judge of this court in W.P.No.14403/2001, the writ petitions are dismissed.

11. As per the averments made in the writ petition that the petitioners – society consists majority of members belonging to schedule castes, schedule tribes and backward classes and as per the averments made in the counter affidavit as the Society has already become defunct and considering the facts and circumstances of the case, there shall be no order as to costs.

AVS

20—09—2007